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8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:
11 CIMMARON SQUARE ROT, LLC,
12 Debtor.

Case No. BK-S-10-34253-LBR
Chapter 11

**DECLARATION OF CHARLES J.
ROTKIN IN SUPPORT OF EMERGENCY
MOTION FOR AN ORDER
AUTHORIZING THE USE OF CASH
COLLATERAL ON AN INTERIM AND
CONTINUING BASIS**

Date: OST Requested
Time: OST Requested

17
18 I, Charles J. Rotkin, declare under penalty of perjury under the laws of the United States
19 that the foregoing is true and correct:

20 1. I am over the age of 18, have personal knowledge of the facts herein, and am
21 competent to testify thereto.

22 2. I am the Managing Member of Cimmaron Square ROT, LLC ("Debtor") and make
23 this declaration in support of the Emergency Motion for an Order Authorizing the Use of Cash
24 Collateral on an Interim and Continuing Basis (the "Motion").

25 3. The Debtor is the co-owner with two other parties which have also filed for relief
26 under Chapter 11, of an existing shopping center situated in an upscale neighborhood retail center
27 within the master planned community of Mountains Edge and in the Southwest portion of the
28 valley (the "Shopping Center"). The Shopping Center is located at the southwest corner of the

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1 intersection of Blue Diamond Road and Cimarron Road on a site of 2.74 acres, zoned for
 2 Commercial Neighborhood Shopping. There are 4 separate buildings constructed in 2008 having
 3 Net Leaseable space of 35,068 sq.ft. 25,412 sq.ft. (approximately 72%) are currently leased.

4 4. Pursuant to a Tenant In Common Agreement, the Shopping Center is managed by
 5 Blue Diamond Partners, LLC ("Blue Diamond"). I am the manager of Blue Diamond and I am
 6 responsible for the management of the Shopping Center through Blue Diamond.

7 5. By an Installment Note dated February 15, 2007¹ between Debtor, its co-owners
 8 and Inland Mortgage Capital Corporation ("Secured Creditor"), Debtor and its co-owners granted
 9 Secured Creditor a security interest in, among other things, the Rents Debtor collects.
 10 Accordingly, the monthly Rents collected from the tenants of the Shopping Center constitute the
 11 Secured Creditor's cash collateral ("Cash Collateral"). The Shopping Center's tenant roster is
 12 attached hereto as **Exhibit "1."**

13 5. The Debtor and its co-owners request authority to use the Secured Creditor's Cash
 14 Collateral pursuant to 11 U.S.C. § 363 to **maintain the Shopping Center, payment of**
 15 **management services and expenses, for payment of common area maintenance expenses,**
 16 **property taxes, liability insurance premiums, landlord expenses incurred by the shopping**
 17 **center, and for no other purposes.** The balance of the Rents collected will be segregated.

18 6. The anticipated revenues and expenses of the Shopping Center over the next
 19 several months are attached in the Budget as **Exhibit "2"** and are incorporated by this reference.

20 7. It is essential to the continued operation of the Shopping Center for the Debtor and
 21 its co-owners to have the ability to utilize the Cash Collateral to maintain the Shopping Center.
 22 There is no realistic source of liquidity to operate the Shopping Center other than the income
 23 generated by the tenants of the Shopping Center.

24 8. Allowing the Debtor and its co-owners to continue to operate the Shopping Center
 25 protects and preserves the Shopping Center's reputation with its current and prospective tenant
 26

27 ¹ The Debtor notes that it hereby reserves any rights to dispute the amount, validity and priority of
 28 any of the deeds of trust and assignments of rents.

1 and allows the Debtor and its co-owners to exist and attempt to reorganize its debt. Doing so
2 allows maximization of the value of the Shopping Center based upon operating performance that
3 will allow the Shopping Center to maintain its "going concern value."

4 9. Conversely, refusing to allow the Debtor and its co-owners to operate the Shopping
5 Center by barring use of the Cash Collateral will result in the immediate termination of operations
6 and catastrophic decline in the Shopping Center's value.

7 10. The anticipated Rents and expenses for the Shopping Center over the next 6 months
8 are expected to be more than sufficient to pay for the maintenance expenses, property tax and
9 insurance expenses, and landlord expenses which include debt service, incurred by the Shopping
10 Center.

11 11. Allowing the Debtor and its co-owners to continue to use the Rents to maintain the
12 Shopping Center will provide time for the Debtor and its co-owners to attempt to reorganize their
13 debts.

14 12. The Shopping Center is properly insured

15 13. With respect to adequate protection, the Debtor will not make the regular monthly
16 payment to Secured Creditor. Funds in excess of operating expenses will be retained in a Debtor
17 in Possession Account. Moreover, the Secured Creditor is protected by a replacement lien under
18 11 U.S.C. § 361 in proceeds of the same postpetition collateral, to the extent that: 1) the Secured
19 Creditor's prepetition interest is valid and nonavoidable, and 2) prepetition cash and proceeds are
20 utilized by the Debtor and its co-owners in this case. The priority of this replacement lien will be
21 the same as its prepetition priority.

22 14. Accordingly, the Secured Creditor should approve the use of Cash Collateral with
23 ordinary monthly operating reporting and ordinary replacement liens. If the Secured Creditor does
24 not consent, the Debtor and its co-owners ask the Court to grant this Motion over the Secured
25 Creditor's objection. Absent authorization to use cash collateral, the Debtor and its co-owners
26 will have insufficient cash available to maintain the Shopping Center and preserve the value of the
27 estate.

28 15. By making the Motion, the Debtor and its co-owners are not waiving: (a) the right

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1 to dispute the issue of what portion, if any, of its funds are cash collateral or the right to dispute
 2 the debt or lien of any creditor, (b) the right to seek Court authority to compensate professionals
 3 retained by the estate, (c) any rights to surcharge any collateral, (d) any rights to challenge the
 4 extent, priority or validity of any lien secured by the business, or (e) any right to avoid any lien
 5 secured by the business pursuant to 11 U.S.C. §§ 542 to 551.

6 16. Because the Shopping Center's cash needs are immediate and absent satisfying
 7 those needs, the Debtor and its co-owners will be forced to terminate maintenance of the Shopping
 8 Center and minimizing the potential value of its estate for creditors, the Debtor and its co-owners
 9 have demonstrated "immediate and irreparable" harm to the estate absent emergency consideration
 10 of the relief requested in the Motion.

11 17. The Debtor and its co-owners assert that the value of the Shopping Center is
 12 approximately the same as the debt to the Secured Creditor. This is not a case where the property
 13 is far "under water" and there is no realistic possibility of reorganization.

14 Dated this 3 day of January, 2011.

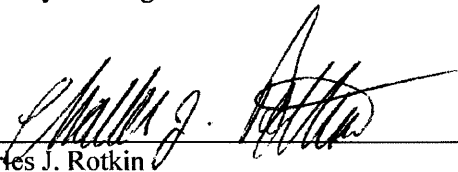
15 
 16 Charles J. Rotkin

EXHIBIT “1”

Commercial Report: Tenant Roster
3-Dec-10
PM 0080Blue Diamond Partners, LLC/ Cimarron Square

<u>Unit</u>	<u>Type</u>	<u>Space</u>	<u>UofM</u>	<u>Current Tenant</u>	<u>Lease Starts</u>	<u>Lease Ends</u>	<u>BaseRent</u>	<u>Recovery</u>	<u>Other</u>	<u>Total Option</u>	<u>Notes</u>
9265-100	Ret	1,171.00	SQFT	SUBWAY REAL ESTATE CORP.	05/15/2009	09/30/2014	3,613.39	458	-	4,076.39 5-yr	
9265-105	Ret	2,529.00	SQFT	KWIKE MART	1/15/2011	1/31/2016	6,000.00	986	-	6,986.00	1st mo Rent prepaid through 2/28/11
9265-115	Ret	2,100.00	SQFT	Vacant			-	-	-	-	Current concession runs through 2/28/11
9285-100	Ret	2,100.00	SQFT	INAKA SUSHI	07/14/2008	07/31/2013	5,376.00	-	-	5,376.00 5-yr	
9285-105	Ret	1,300.00	SQFT	PAPA JOHN'S PIZZA	06/14/2008	06/30/2013	4,482.30	549	-	5,031.30 5-yr	
9285-110	Ret	1,500.00	SQFT	LEGENDS 6 CLEANERS	05/10/2009	11/30/2014	4,480.00	587	80	5,147.00 5-yr	12/10 Rent is free per original Lease
9285-115	Ret	1,500.00	SQFT	FANTASTIC NAILS	06/14/2008	06/30/2013	3,000.00	-	-	3,000.00 5-yr	Kent renegotiated CAM waived through 12/31/10
9285-120	Ret	3,200.00	SQFT	PACIFIC DENTAL SERVICES, INC.	06/14/2008	06/30/2018	10,720.00	1,198.00	-	11,918.00 5-yr	
9325-100	Ret	3,533.00	SQFT	SNAP FITNESS	05/23/2008	09/30/2013	7,066.00	934	-	8,000.00 5-yr	
9325-115	Ret	1,200.00	SQFT	Vacant			-	-	-	-	
9325-120	Ret	2,832.00	SQFT	Vacant			-	-	-	-	
9325-135	Ret	2,240.00	SQFT	Vacant			-	-	-	-	
9325-140	Ret	2,923.00	SQFT	BARKING DOGS SELF-WASH	06/01/2010	01/10/2015	7,307.50	1,144.91	-	8,452.41 5-yr	
9345-100	Ret	3,012.00	SQFT	MIZ LOLA'S SPIRITS & GAMING	2/1/2011	1/31/2017	7,530.00	1,114.44	-	8,644.44	
9345-110	Ret	1,300.00	SQFT	POPPY'S FROZEN YOGURT	12/15/2009	12/31/2014	3,150.00	-	-	3,150.00 5-yr	
9345-115	Ret	1,753.00	SQFT	Vacant			-	-	-	-	1st mo Rent prepaid
9345-120	Ret	1,475.00	SQFT	PATTY'S CLOSET	07/13/2008	07/31/2013	5,476.90	578	-	6,054.90 5-yr	Kent & CAM concession through 4/30/11
PAD	Ret	-	SQFT	NEVADA STATE BANK (CAM ONLY)	06/01/2008		-	-	-	-	
		35,668.00	Total floor				68,207.09	7,549.35	80.00	75,836.44	
		25,543.00	Total occupancy				68,207.09	7,549.35	80.00	75,836.44	
		10,125.00	Total vacancy		72% 28%						
		35,668.00	Total project		100%		68,207.09	7,549.35	80.00	75,836.44	

EXHIBIT “2”

CIMARRON SQUARE
BUDGET WORKSHEET
2011 BUDGET

		12/23/2010											
INCOME													
BASE RENT	\$ 62,531	\$ 69,309	\$ 62,001	\$ 65,096	\$ 69,309	\$ 64,937	\$ 71,673	\$ 71,670	\$ 71,887	\$ 71,887	\$ 71,887	\$ 71,887	\$ 824,075
COMMON AREA	\$ 14,598	\$ 14,599	\$ 14,599	\$ 11,670	\$ 14,599	\$ 14,599	\$ 14,599	\$ 14,599	\$ 14,599	\$ 14,599	\$ 14,599	\$ 14,599	\$ 172,261
NSB QUARTERLY CAM	\$ 2,262			\$ 2,728			\$ 2,728						\$ 10,447
Less Vacancy/Concession	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (4,143)	\$ (49,720)
TOTAL INCOME	\$ 75,249	\$ 79,765	\$ 72,457	\$ 75,351	\$ 79,765	\$ 75,393	\$ 84,858	\$ 82,126	\$ 82,343	\$ 85,071	\$ 82,343	\$ 82,343	\$ 957,063
COMMON AREA MAINTENANCE EXPENSES													
ELECTRICITY	\$ 1,300	\$ 1,300	\$ 1,300	\$ 1,300	\$ 1,300	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 1,300	\$ 1,300	\$ 1,300	\$ 18,400
GARBAGE/TRASH REMOVAL	\$ 4,712	\$ 680	\$ 4,712	\$ 680	\$ 680	\$ 4,712	\$ 4,712	\$ 680	\$ 680	\$ 4,712	\$ 680	\$ 680	\$ 24,293
PORTER SERVICE	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750	\$ 9,000
PARKING LOT SWEEPING	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 7,200
LANDSCAPING CONTRACT	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 525	\$ 6,300
LANDSCAPING EXTRAS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 0.00
PEST CONTROL	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 89	\$ 1,068
GENERAL MAINTENANCE	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 3,000
PARKING LOT REPAIRS	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 1,200
PARKING LOT STEAM CLEANING	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 533	\$ 6,390
AWNINGS/WINDOWS	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 1,200
LIGHT BULBS & FIXTURES	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 50	\$ 600
FIRE/LIFE SAFETY	\$ 560	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 220	\$ 4,000
TOTAL	\$ 9,569	\$ 5,197	\$ 5,197	\$ 9,569	\$ 5,197	\$ 5,897	\$ 10,269	\$ 5,897	\$ 5,897	\$ 5,197	\$ 5,197	\$ 5,197	\$ 82,651
PROPERTY TAX & INSURANCE EXPENSE													
PROPERTY TAXES	\$ 11,697	\$ -	\$ 11,697	\$ -	\$ -	\$ -	\$ -	\$ 11,697	\$ -	\$ -	\$ -	\$ -	\$ 46,789
LIABILITY INSURANCE	\$ 2,486	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 943	\$ 10,976
TOTAL	\$ 14,184	\$ 943	\$ 12,641	\$ 943	\$ 943	\$ 943	\$ 943	\$ 12,640	\$ 943	\$ 12,640	\$ 943	\$ 943	\$ 57,765
TENANT REIMBURSABLE EXPENSES													
SEWER	\$ 2,309	\$ -	\$ -	\$ 2,309	\$ -	\$ -	\$ 2,759	\$ -	\$ -	\$ 2,309	\$ -	\$ -	\$ 9,687
WATER	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 1,200	\$ 1,200	\$ 1,200	\$ 800	\$ 800	\$ 800	\$ 800	\$ 9,687
GREASE TRAP EXPENSES	\$ -	\$ 250	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000
ROOF REPAIRS	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 1,200
TOTAL	\$ 3,209	\$ 1,150	\$ 900	\$ 3,209	\$ 1,150	\$ 1,300	\$ 4,059	\$ 1,550	\$ 1,300	\$ 3,209	\$ 1,150	\$ 900	\$ 23,087
TOTAL OPERATING EXPENSE	\$ 26,962	\$ 7,290	\$ 18,738	\$ 13,721	\$ 7,290	\$ 8,140	\$ 15,271	\$ 20,087	\$ 8,140	\$ 25,418	\$ 6,347	\$ 6,097	\$ 163,503
NOI	\$ 48,287	\$ 72,474	\$ 53,719	\$ 61,630	\$ 72,474	\$ 67,252	\$ 69,586	\$ 62,039	\$ 74,203	\$ 59,653	\$ 75,996	\$ 76,246	\$ 793,560
LANDLORD EXPENSES													
VACANT SITE EXPENSE	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 6,000
TENANT IMPROVEMENT LEASING	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 120,000
COMMISSION/IMPOUND ACCOUNT	\$ 2,257	\$ 2,393	\$ 2,174	\$ 2,261	\$ 2,393	\$ 2,262	\$ 2,546	\$ 2,464	\$ 2,470	\$ 2,552	\$ 2,470	\$ 2,470	\$ 28,712
MANAGEMENT FEES	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 48
LONG DISTANCE	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 48
POSTAGE & OVERNIGHT MAIL	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 70	\$ 840
OTHER - COPIES, DEP BOOKS, ETC	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 246	\$ 2,954
TOTAL LANDLORD EXPENSE	\$ 13,078	\$ 13,213	\$ 12,984	\$ 13,081	\$ 13,213	\$ 13,082	\$ 13,366	\$ 13,284	\$ 13,290	\$ 13,372	\$ 13,290	\$ 13,290	\$ 158,554
CASH FLOW	\$ 35,210	\$ 59,261	\$ 40,726	\$ 48,549	\$ 59,261	\$ 54,170	\$ 56,220	\$ 48,755	\$ 60,912	\$ 46,281	\$ 62,706	\$ 62,956	\$ 635,006